# ORIGINAL



### UNITED STATES OF AMERICA BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of

ECM BioFilms, Inc.,
a corporation, also d/b/a
Enviroplastics International

Docket No. 9358

PUBLIC DOCUMENT

# WITHDRAWAL OF MOTION TO COMPEL RESPONDENT TO PRODUCE DOCUMENTS

On January 23, 2014, Complaint Counsel filed a motion seeking an order from this Court to compel Respondent to produce documents and information in response to our first set of document requests ("Motion to Compel"). Respondent filed an opposition to our Motion to Compel on January 28, 2014. On January 29, 2014, the Court ordered Complaint Counsel to file a reply on or before February 3, 2014, which it did on January 31, 2014.

On February 5, 2014, Respondent notified Complaint Counsel of its desire to resolve this dispute without an order from the Court and proposed an agreement to turn over its responsive documents. The parties subsequently engaged in a series of meet and confers to discuss Respondent's proposal. Respondent has represented to Complaint Counsel that:

- (1) It will produce the entire Email Archive<sup>1</sup> for the period of January 1, 2009 through January 1, 2014, including internal communications (to the extent they exist), scientific and technical data that (i) are possessed by ECM and (ii) were not already produced in prior productions, and all associated files, subject only to the following limitations:
  - a. ECM will redact or expurgate its customers' confidential business information to the extent that information is defined by mutual confidentiality agreements executed with certain ECM customers;

<sup>&</sup>lt;sup>1</sup> Capitalized terms used and not defined herein have the meanings set forth in the Motion to Compel and Complaint Counsel's reply.

b. ECM will redact or expurgate all information subject to privilege, including,
 e.g., the attorney work product privilege, the attorney-client privilege, and
 trade secret privileges; and

c. ECM shall designate all correspondence with customers (and associated files) as confidential under the standing protective order.

(2) ECM will timely respond to Complaint Counsel's second set of discovery requests.

(3) ECM will produce files from the Email Archive on a rolling basis, meaning as it is retrieved and immediately after it is reviewed by counsel, and ECM agrees to complete the production by February 21, 2014, subject to its obligation and right to amend or supplement discovery under 16 C.F.R. § 3.31(e).

(4) ECM will produce the remainder of the Summary Database (encompassing all emails, faxes, and phone calls from January 1, 2009 to the present) on or before February 12, 2014.

Complaint Counsel's request for documents under the Motion to Compel is now moot based on Respondent's representations above. Accordingly, Complaint Counsel hereby withdraws the Motion to Compel, without prejudice to refiling the Motion if Respondent fails to abide by the terms of its proposed agreement.

Dated: February 7, 2014

Respectfully submitted,

/s/ Katherine Johnson

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### **CERTIFICATE OF SERVICE**

I hereby certify that on February 7, 2014, I caused a true and correct copy of the foregoing to be served as follows:

One electronic copy to the **Office of the Secretary**, and one copy through the FTC's e-filing system:

Donald S. Clark, Secretary Federal Trade Commission 600 Pennsylvania Ave., NW, Room H-159 Washington, DC 20580 Email: secretary@ftc.gov

One electronic copy and one hard copy to the Office of the Administrative Law Judge:

The Honorable D. Michael Chappell Administrative Law Judge 600 Pennsylvania Ave., NW, Room H-110 Washington, DC 20580

#### One electronic copy to Counsel for the Respondent:

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I further certify that I possess a paper copy of the signed original of the foregoing document that is available for review by the parties and the adjudicator.

Date: February 7, 2013

/s/ Katherine Johnson

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